

DEC 11 2017

UNITED STATES DISTRICT COURT

for the

Western District of Virginia

Division

JULIA C. DUDLEY, CLERK
BY: A. Blaylock
DEPUTY CLERK

Melinda Scott

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-
Ms. Judith M. Lyall, Henry A. Barringer,
George Robert Brittain III, Beverly S. Tiller,
Patrick E. Johnson, Jack S. Hurly Jr.,
Michael Lee Moore, Richard Patterson, Henry Vanover

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

Case No.

2:17cv30

(to be filled in by the Clerk's Office)

Jury Trial: (check one) ☐ Yes ☐ No

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS
(Non-Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

Address (VA ACP)

County

Telephone Number

E-Mail Address

Melinda Scott

PO BOX 1133-2014PMB87

Richmond VA 23218

City

State

Zip Code

WISE (RESIDENCE)

540-692-2342

MSCOTTW@GMU.EDU

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

Job or Title (if known)

Address

County

Telephone Number

E-Mail Address (if known)

Ms. Judith M. Lyall

Clerk

1012 Walnut St., Suite 328

Grundy VA 24614

City

State

Zip Code

Buchanan

276-935-6526

☐ Individual capacity
 ☒ Official capacity

Defendant No. 2

Name

Job or Title (if known)

Address

County

Telephone Number

E-Mail Address (if known)

Honorable Henry A. Barringer

Judge

1012 Walnut St., Suite 328

Grundy VA 24614

City

State

Zip Code

Buchanan

276-935-6526

☐ Individual capacity
 ☒ Official capacity

Defendant No. 3

Name

Honorable George Robert Brittain II

Job or Title (if known)

Judge

Address

1012 Walnut St., Suite 328

Grundy

VA

24614

City

State

Zip Code

County

Buchanan

Telephone Number

246-935-6526

E-Mail Address (if known)

☐ Individual capacity
 ☒ Official capacity

Defendant No. 4

Name

Hon. Beverly S. Tiller

Job or Title (if known)

Clerk

Address

1012 Walnut St., Rm. 210

Grundy

VA

24614

City

State

Zip Code

County

Buchanan

Telephone Number

246-935-6567

E-Mail Address (if known)

☐ Individual capacity
 ☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

Please see attachment

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

n/a

Additional Defendants

5. Hon. Patrick R. Johnson, Presiding Judge

1012 Walnut Street Room 210 Grundy, VA 24614

Phone: (276) 935-6567

6. Hon. Jack S. Hurley Jr., Chief Judge

1012 Walnut Street Room 210 Grundy, VA 24614

Phone: (276) 935-6567

7. Hon. Michael Lee Moore

1012 Walnut Street Room 210 Grundy, VA 24614

Phone: (276) 935-6567

8. Hon. Richard C. Patterson

1012 Walnut Street Room 210 Grundy, VA 24614

Phone: (276) 935-6567

9. Hon. Henry A. Vanover

1012 Walnut Street Room 210 Grundy, VA 24614

Phone: (276) 935-6567

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

Please see attachment

III. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. Where did the events giving rise to your claim(s) occur?
The events giving rise to my claim occurred on October 23, 2017 at the Buchanan County Courthouse, in the General District Court
- B. What date and approximate time did the events giving rise to your claim(s) occur?
The events occurred on October 23, 2017 between 1:00 p.m. (EST) and 2:30 p.m. (EST)
- C. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

Please see attachment

IV. Injuries

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

My injuries are as follows:

1. Grief
2. Inconvenience
3. Deprivation of my rights

V. Relief

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

The relief I am requesting from this Honorable Court is the following:

1. That an Immediate Injunction be ordered against the clerks and Judges of the Buchanan County General District Court to grant me an appeal to their Circuit Court without paying an appeal bond of any kind.

The basis for requesting the above relief is as follows:

1. I am entitled to the above requested relief as a matter of Federal and State law, as a citizen of Virginia and the United States
2. Federal and State law grants me the right to appeal without an appeal bond in the manner I have described in Sections II and III of this form

Section II B

The Defendants have violated my 7th, 8th and 14th Amendment rights

Section II D

The Defendants have acted under "color of law" by attempting to enforce Virginia's Appeal Bond's statutes, yet doing so improperly. Although Virginia does have a statute requiring an Appeal Bond, it states clearly that "*In all civil cases, except trespass, ejectment, unlawful detainer against a former owner based upon a foreclosure against that owner, or any action involving the recovering rents, no indigent person shall be required to post an appeal bond*" (emphasis added, Virginia Code 16.1-107).

Additionally, Virginia Code 8.01-676.1(N) states that "*No person who is an indigent shall be required to post security for an appeal bond.*" The case I brought was a Warrant in Debt against a Landlord for Breach of Contract. It was not a trespass, ejectment, unlawful detainer or recovering rents issue. Therefore, having filed as a pro-se litigant *in forma pauperis*, it was "color of law" for the Judge to rule that I needed to pay an appeal bond to proceed to an appeal to the Buchanan County Circuit Court for a Breach of Contract issue. The Circuit Court Judge of the Buchanan County Court also granted my application to proceed on an appeal *in forma pauperis*. Consequently, I should have been given an appeal hearing without being required to pay an appeal bond.

Section III C

In August 2017 I was defrauded by a Landlord in Buchanan County. I filed for a Warrant in Debt in a General District Court in a County in Virginia to recover damages for a Breach of Contract. I filed in the locality of the Defendant (Buchanan County). The Defendant was served properly. The hearing was scheduled for October 23, 2017. On the day of the hearing I was late to the Buchanan County courthouse for reasons beyond my control. I had to file for a Protective Order in another county the same morning. Even still, I was only 20 minutes late to the Buchanan County Courthouse. It was raining and I had to travel across winding mountain roads. I could not obtain a cell phone signal to call the Courthouse. The Judge knew from my paperwork I was coming from far away.

There were about 50 other people waiting their turn in the courtroom. However, the Judge elected to try my case in my absence less than 20 minutes after opening Court at 1:00 pm. They did not ask the Defendants to wait in the Courtroom so they could try and call me a little bit later in the hour. Doing so would not have impeded on their docket

schedule. When I later arrived and asked the Judge why he didn't wait for me he stated that "the Defendants were paying an attorney by the hour". The attorney and the Defendants were given special treatment by the Judge even though the 50+ other people in the courtroom were waiting their turn. He could have asked them to wait a reasonable amount of time in order to give equal opportunity to all of us, but did not. As a result, I was tried on a counter claim in my absence. Based on the statements of the Defendants and their attorney, I was ordered to pay their attorney's fees. The statements they made to the Judge were false and misleading.

When I requested to Appeal to the Circuit Court *in forma pauperis* I was told that although I qualified for a waiver of the appeal fees, I had to pay an Appeal Bond in the sum of the attorney's fees (\$750). I assert that asking me to pay such an Appeal Bond is against the laws of Virginia and a violation of my 7th, 8th and 14th Amendment rights. All of the clerks of the Buchanan County General District Court, clerks of the Circuit Court and the Judges who enforced this decision upon me and refused to grant me an appeal hearing have deprived me of my constitutional rights under color of law. Ultimately, it doesn't matter why I was late to court or why I missed the hearing. The issue is how the appeal process is being handled by them at the expense of my rights.

The ruling of the Judges and the enforcement of the ruling by the Clerks in denying me an appeal hearing unless I paid an Appeal Bond is against the laws of Virginia. Although Virginia does have a statute requiring an Appeal Bond, it states clearly that "*In all civil cases, except trespass, ejectment, unlawful detainer against a former owner based upon a foreclosure against that owner, or any action involving the recovering rents, no indigent person shall be required to post an appeal bond*" (emphasis added, Virginia Code 16.1-107). Additionally, Virginia Code 8.01-676.1(N) states that "*No person who is an indigent shall be required to post security for an appeal bond.*" The case I brought was a Warrant in Debt against a Landlord for Breach of Contract. It was not a trespass, ejectment, unlawful detainer or recovering rents issue. Therefore, having filed as a pro-se litigant *in forma pauperis*, it was "color of law" for the Judge to rule that I needed to pay an appeal bond to proceed to an appeal to the Buchanan County Circuit Court for a Breach of Contract issue. It was "color of law" for the Clerks to enforce such a ruling.

Further, their actions constitute a violation of my 7th Amendment rights because the Appeal Bond is being used as a way to block my right to a jury trial. This right to a jury trial can only be accessed by appealing to Virginia's Circuit Courts. Their actions are a covert tactic being used to block access to justice for low income citizens.

Their actions are also a violation of my 8th Amendment rights against "excessive fines". When an Appeal Bond is far above an indigent litigant's income level it operates as "excessive". When the Appeal Bond in a Contract Law case is ruled upon the one sided statements of a Defendant it operates as a "fine" because it does not give way to the possibility that the absent Plaintiff has a valid cross claim. Instead it gives an unmerited advantage to the Defendant. Dismissing and/or rescheduling the case with or without prejudice upon the absence of a Plaintiff is one matter. (This is not uncommon because the reality is that many people miss court due to factors beyond their control. They are often given second chances for a hearing by the case being rescheduled or dismissed without an appeal bond). But to make the assumption that a Plaintiff filed a frivolous lawsuit and should pay an Appeal Bond of attorney's fees based solely on the one sided

statements of a Defendant is a "fine" upon a Plaintiff. The Judge in this case never weighed the Defendant's statements in light of all the factors of Contract Law. It is impossible for him to have made a proper ruling in my absence because Contract Law under the UCC has many elements and factors which require statements from both parties and proof that the Defendants in this case did not give. An improper ruling in this manner which manifests into an Appeal Bond is a "fine". In effect, the Plaintiff (me in this case) is being "fine[d] for being absent and "fine[d]" under the biased assumption that I have no cross claim. The Appeal Bond manifests as a "fine" because there is no way to overturn the unmerited ruling without paying the Appeal Bond even if the GDC is in error and even if the Defendants are making misleading statements. I should not have to pay an Appeal Bond "fine" that was ruled upon in my absence by a Judge who did not apply Contract Law appropriately.

Lastly is the issue of their actions being a violation of my 14th Amendment rights. An Appeal Bond imposed on me as an indigent litigant is a way for them to deprive me of my property without due process of law. The law says I can proceed as an indigent litigant without paying the Appeal Bond (Virginia Code 16.1-107 and 8.01-676.1). My right to appeal to a jury court has been conditioned upon me handing over a sum of money (intangible property) even if Virginia Law says I don't have to.

Further, their actions deny me "equal protection of the laws". By their design, petitions to proceed *in forma pauperis* do not ask one to justify why they are poor. Rather one must only demonstrate to the courts why one can qualify to proceed *in forma pauperis*. Many persons who qualify to proceed *in forma pauperis* live under the Federal Poverty Level. Despite what anyone thinks about living in such a status, low income citizens still deserve "equal protection of the laws". Yet, to impose upon a indigent litigant and citizen of the US an Appeal Bond in order to have access to a jury court, access to appeal courts, and access to "notions of fair play and justice" creates an inequality. Such actions deny indigent litigants equal protection of the laws by creating a disadvantage to obtaining to justice. The actions of the clerks and judges of the Buchanan County courthouse have denied me equal protection of the laws as an indigent litigant.